Filed 9/22/14 P. v. Arredondo CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JUAN ESTEVAN ARREDONDO, Defendant and Appellant.	G049902 (Super. Ct. Nos. SWF1102435 & SWF1103137 O P I N I O N

Appeal from a judgment of the Superior Court of Riverside County, Albert J. Wojcik, Judge. Affirmed.

Michael B. McPartland, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel and Stephanie H. Chow, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant was convicted by jury of committing sex crimes against two children. He contends the trial court abused its discretion in denying his severance motion, which was effectively a request for separate trials with respect to each of the victims. Under the circumstances presented in this case, a joint trial on all charges was clearly proper. We therefore affirm the judgment.

FACTS

In 2005, appellant and his wife Adrian were living in San Diego with their two children, Adrian's mother Anselma, and Adrian's 11-year old sister, Jane Doe 1. Appellant was in the Marines and deployed overseas from time to time, but still managed to molest Jane Doe 1 on multiple occasions. Appellant would enter her room at night and get into bed with her. After taking off her clothes, he would then touch and penetrate her vagina with his fingers. This happened more than 10 times when Jane Doe 1 was 12 and 13 years old.

Appellant also raped Jane Doe 1 on numerous occasions, starting when she was 13 years old. The first incident happened in her bedroom, at night. She told appellant to stop and tried to push him away, but he was bigger and stronger and penetrated her vagina with his penis.

The abuse wasn't limited to the bedroom. Once, when appellant and Jane Doe 1 were driving home alone, he pulled off the road, parked his truck, and sexually assaulted her. He groped her breasts, removed her clothes and raped her on the spot. During this incident, and on other occasions, appellant forced Jane Doe 1 to fondle his penis. If she tried to take her hands away, appellant pushed her head down toward his penis.

There were other forms of abuse as well. Between the ages of 14 and 17, appellant orally copulated Jane Doe 1 on numerous occasions. Even when he was halfway around the world, he found ways to harass her. While in Iraq in 2010 and 2011,

he sent her pictures of his erect penis on his cell phone.[1] He also offered to give Jane Doe 1 money for sending him naked pictures of her, which she did through her cell phone. On at least one occasion, appellant told Adrian to give Jane Doe 1 money after she had sent him such pictures.

Because appellant often threatened her with reprisals, Jane Doe 1 kept the abuse a secret for a number of years. However, in June 2011, at the age of 17, she told a neighbor appellant had been sexually molesting her. The neighbor, a probation officer, informed Child Protective Services, and an investigation was commenced. While the investigation was pending, Adrian filed for divorce and moved to Georgia for job training, and Anselma and Jane Doe 1 moved to a different location. Adrian's cousin Sarina and her family moved into appellant's house to help care for his children.

Sarina had three children, including Jane Doe 2, who was 13 years old on September 25, 2011. That night, appellant arrived home around 10:00 p.m., after attending a car show. Soon after he arrived, Jane Doe 2 went to bed in an upstairs loft with her siblings. Around 1:00 a.m., appellant entered the loft and crawled into bed with her, and she awoke to find him rubbing her inner thigh. He put his arms around her, unfastened her pants, and tried to slide his hands underneath her underpants, but she pushed him away and ran downstairs. Appellant followed her and spoke to her in the kitchen. While crying, he apologized for his actions and begged her not to tell anyone about them. However, later that morning, Jane Doe 2 told Sarina that appellant had tried to rape her. Sarina then took Jane Doe 2 to the police, and she gave a detailed account of the incident to investigators. At trial, Jane Doe 2 testified that, prior to that particular incident, appellant often grabbed and slapped her butt when they were alone.

Appellant was charged with 12 counts of child sexual abuse, 11 of which named Jane Doe 1 as the victim. More particularly, as to Jane Doe 1, appellant was

[1] By that time, appellant and his family had moved from San Diego to Temecula.

charged with three counts of forcible rape (Pen. Code, § 261, subd. (a)(2)),[2] three counts of forcible oral copulation (§ 288a, subd. (c)(2)), two counts of aggravated sexual assault (§ 269, subd. (a)) and three counts of lewd and lascivious conduct (§ 288, subd. (a)). As to Jane Doe 2, appellant was charged with one count of forcible lewd and lascivious conduct. (§ 288, subd. (b)(1).) It was also alleged appellant committed child sex crimes against multiple victims. (§ 667.61, subd. (e)(4).)

Before trial, appellant moved to sever the count involving Jane Doe 2 from the remaining counts. The motion was denied, and all of the counts were tried together in a single trial. Appellant took the stand in his own defense and denied the charges. He claimed the victims were lying and he never touched them inappropriately. The jury found appellant not guilty of one of the aggravated sexual assault charges and was unable to reach a verdict on the other such charge. But it convicted on the remaining counts and found the multiple victim allegation true. The court sentenced appellant to 150 years to life in prison.

DISCUSSION

Appellant argues the trial court abused its discretion and violated his due process rights by denying his severance motion. We disagree.

In the interest of judicial economy, there is a preference that all charges against a defendant be handled in one proceeding. (*People v. Capistrano* (2014) 59 Cal.4th 830, 848.) Absent a clear showing joinder resulted in prejudice to the defendant, we will not disturb a trial court's refusal to sever charges when, as here, they were properly consolidated in a single case. (*Ibid*.) "If the evidence underlying the charges in question would be cross-admissible, that factor alone is normally sufficient to dispel any suggestion of prejudice and to justify a trial court's refusal to sever properly joined charges. [Citation.]" (*People v. Soper* (2009) 45 Cal.4th 759, 774-775.)

[2] Unless noted otherwise, all further statutory references are to the Penal Code.

Regarding the issue of cross-admissibility, the law is clear. In sex crime cases, Evidence Code section 1108 specifically authorizes the prosecution to introduce evidence the defendant has committed uncharged sexual offenses, so long as that evidence is not unduly prejudicial within the meaning of Evidence Code section 352. (Evid. Code, § 1108, subd. (a).) Evidence Code section 352 empowers the trial court to exclude evidence if its probative value is substantially outweighed by the probability its admission would cause undue prejudice. Under this section, the trial court has broad discretion to admit or exclude evidence, and its decision to do so will not be disturbed unless it is arbitrary, capricious or patently absurd. (*People v. Kelly* (2007) 42 Cal.4th 763, 783; *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124.)

Appellant claims the evidence regarding his molestation of Jane Doe 1 was unduly prejudicial under Evidence Code section 352 because it caused the jury to believe he was a bad person who was predisposed to commit the charged offense involving Jane Doe 2. However, appellant forgets the very reason the Legislature enacted Evidence Code section 1108 was "to expand the admissibility of disposition or propensity evidence in sex offense cases." (*People v. Falsetta* (1999) 21 Cal.4th 903, 911.) To show an abuse of discretion under Evidence Code section 352, appellant must demonstrate the evidence regarding the charges involving Jane Doe 1 was so prejudicial as to outweigh the substantial probative value it had in terms of showing his disposition to sexually abuse Jane Doe 2. (*People v. Soto* (1998) 64 Cal.App.4th 966, 984.)

In this regard, appellant claims the evidence involving Jane Doe 1 was unduly time consuming, confusing and misleading. However, while Jane Doe 1 did spend a considerable amount of time on the witness stand, it was clear from her testimony the allegations she described were distinct from the incident involving Jane Doe 2. Because the victims' allegations were largely separated in terms of when and where the subject abuse occurred, we do not believe the jury would have had any particular difficulty keeping them straight.

Nor were the charges involving Jane Doe 1 so remote or unrelated as to make them irrelevant to the charges involving Jane Doe 2. In fact, all of the alleged offenses happened within six years of each other, the victims were similar in age, they were both part of appellant's extended family, and appellant employed the same modus operandi as to both of them. Under these circumstances, the evidence of appellant's conduct toward Jane Doe 1 was tremendously probative as to whether he sexually abused Jane Doe 2. Notwithstanding Evidence Code section 352, the evidence clearly would have been admissible had appellant been tried separately on the sole count involving Jane Doe 2. (See *People v. Delgado* (2010) 181 Cal.App.4th 839, 847 [noting that where the defendant has been accused of sexually abusing multiple children, their testimony is often cross-admissible].)

Besides cross-admissibility, other factors bearing on whether the trial court abused its discretion in denying appellant's severance motion include whether any of the charges were unusually likely to inflame the jury and whether a weak case was joined with a strong one. (*People v. Bradford* (1997) 15 Cal.4th 1229, 1315.) Appellant argues the charges involving Jane Doe 1 were much more inflammatory than the lone charge involving Jane Doe 2 because they included allegations of forcible rape and forcible oral copulation. However, appellant was accused of committing a lewd and lascivious act against Jane Doe 2 *by force*, so force was a common denominator with respect to both victims. While appellant committed a greater number, a greater variety and more serious offenses against Jane Doe 1 than he did against Jane Doe 2, all of the alleged offenses were similar in that they involved serious sexual misconduct against a child. As compared to the evidence concerning Jane Doe 2, we do not believe the evidence concerning Jane Doe 1 was so inflammatory as to provoke an irrational response from the jury. Indeed, the fact the jury acquitted appellant of one charge and deadlocked on another indicates it considered the charges individually and did not blindly assess appellant's guilt based solely on the nature or the number of the allegations he faced.

As for the relative strength of the evidence, appellant is probably correct that the case involving Jane Doe 1 was stronger than the case involving Jane Doe 2. After all, the evidence showed Jane Doe 1 and appellant exchanged lewd pictures, which suggests they had a sexual relationship. However, in terms of the acts they accused appellant of committing, both victims gave similar accounts. And in each case, it was their word against appellant's because there were no independent witnesses as to *any* of the alleged misconduct. The relative strength of the evidence as to the victims was not so disparate so as to create an undue danger of prejudice by virtue of a joint trial.

At the end of the day, we are convinced the trial court acted well within its discretion in denying appellant's severance motion. Whether considered at the time it was made, or in light of the evidence adduced at trial, the court's decision did not render appellant's trial unfair or violate due process. (See *People v. Merriman* (2014) 60 Cal.4th 1, 41-43 [upholding the denial of the defendant's motion to sever sexually related charges involving different victims]; *People v. Nguyen* (2010) 184 Cal.App.4th 1096, 1114 [same].)

DISPOSITION

The judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

FYBEL, J.

THOMPSON, J.